

Small Plan Seven-Day Safe Harbor for Remitting Participant Contributions

DOL Issues Final Rule

On January 14, 2010, the U.S. Department of Labor (DOL) issued final regulations establishing a seven-day optional “safe harbor” period in which employers may remit participant contributions to certain ERISA-covered plans with fewer than 100 participants (small plans).

Background: Employers of all sizes are required to transmit participant contributions to plans subject to ERISA’s trust requirements by the earliest date on which the contributions can reasonably be segregated from the employer’s general assets. Under the DOL safe harbor, participant contributions to a small plan that are deposited by the seventh business day following the date of receipt or withholding by the employer will be treated as made in a timely manner – even if the employer could have deposited the contributions more quickly.

The safe harbor applies to participant contributions and loan repayments to small retirement plans (such as 401(k) plans) and to small welfare plans (such as group health plans) that are required to comply with ERISA’s trust requirements.

The DOL did not extend the safe harbor to plans with 100 or more participants (large plans), stating that it lacked sufficient information and data to evaluate current practices and to assess the costs, benefits and risks to participants associated with extending the safe harbor to large plans at this time.

Comment: This suggests that the DOL may consider extending the seven-day safe harbor to large plans at some future date.

There also has been no change to the outside dates by which participant contributions must be deposited with plans:

- > For SIMPLE plans that involve SIMPLE retirement accounts, the 30th calendar day following the month in which the participant contributions were withheld by the employer.
- > For most ERISA-covered retirement plans, the 15th business day of the month following the month in which the participant contributions or loan payments are received or withheld by the employer.

- > For welfare plans subject to ERISA's trust requirements, 90 days from the date the amounts are received or withheld by the employer.

Comment: Participant pre-tax contributions under a "cafeteria plan" as defined in Section 125 of the Internal Revenue Code are not required to be held in trust.

Effective Date: The small plan safe harbor is effective immediately.

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